

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____)
In the Matter of)
)
Telecom Argentina USA, Inc.)
)
Application for Transfer of Control over) File No. _____
Its Authority pursuant to Section 214 of the)
Communications Act of 1934, as amended)
_____)

APPLICATION

Telecom Argentina USA, Inc. ("Telecom Argentina USA"), hereby requests retroactive authority, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. Section 214 (1982), and Section 63.24 of the Commission's Rules, 47 C.F.R. Section 63.24, to transfer control over its authority to provide global international facilities-based and resale services between the United States and international points as described below and in its original application (File No. ITC-214-20010129-00034). Prior to the transaction that is the subject of this application, control over Telecom Argentina USA was held by Telecom Italia S.p.A. ("TI") and its controlled company Telecom Italia International NV ("TII") (TI and TII the "Telecom Italia Group"), with the Telecom Italia Group indirectly holding 50% of the equity of Telecom Argentina USA,¹ and W de Argentina - Inversiones, S.L. ("W de Argentina") holding 48% (having acquired all but 2%

¹ Telecom Argentina USA is a wholly-owned subsidiary of Telecom Argentina S.A., which in turn is controlled by Nortel Inversora S.A., which is controlled by Sofora Telecomunicaciones S.A. ("Sofora").

of France Telecom's ownership of Telecom Argentina).² In early 2008, W de Argentina informed Sofora that it was exercising its option to acquire the additional 2%, but due to a certain request for clarification submitted by Sofora to the local Authorities, the 2% stake was not registered in the Share Ledger under W de Argentina's name until April 17, 2009. No transfer of control applications were filed at the Commission at that time, but Telecom Argentina USA is now requesting retroactive approval of that transaction ("the Transaction") and simultaneously seeking Special Temporary Authority.

Subsequent to the 2% transfer, on August 5, 2010, certain entities of the Wertheim Group and the Telecom Italia Group entered into a share purchase agreement under which the Telecom Italia Group increased its share ownership of Sofora to 58% by purchasing equity held by W de Argentina, with the remaining 42% retained by W de Argentina. This subsequent transfer occurred on October 13, 2010. Telecom Argentina USA filed applications/notifications with the Commission with regard to this transaction (File No. ITC-T/C-20101115-00451; WC Docket No. 10-242).³

Because the Transaction has already closed and been reversed by subsequent events (reduction of W de Argentina's ownership in Sofora from 50% to 42% occurred on October 13, 2010 and to 32% on March 9, 2011), Telecom Argentina USA is requesting retroactive approval. In this regard, Telecom Argentina USA notes that any failure to obtain prior

² The earlier transaction between W de Argentina and France Telecom was reported to the Commission as a *pro forma* notification. (Letter from Jean L. Kiddoo and Troy F. Tanner to Marlene H. Dortch, dated June 29, 2004). W de Argentina also acquired an option to purchase France Telecom's remaining shares.

³ On March 9, 2011, Telecom Italia Group increased its share ownership in Sofora to 68% by purchasing equity held by W de Argentina, with the remaining 32% held by W de Argentina. This last transaction has no effect on the control of Telecom Argentina USA, so no filing is required.

approval is harmless, particularly because the Commission has already had the requisite information to review the qualifications of W de Argentina based on the information furnished to the Commission in the letter notifying the FCC of W de Argentina's acquisition of the 48% ownership.⁴

Pursuant to Section 63.24(e)(2) of the Commission's Rules, Telecom Argentina USA provides the information required in paragraphs (a) through (d) and (h) through (p) of § 63.18.

- (a) *The name, address, and telephone number of each applicant;*

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Miami, FL 33130
Telephone: 305-416-4300**

- (b) *The Government, State, or Territory under the laws of which each corporate or partnership applicant is organized;*

Telecom Argentina USA is a Delaware corporation.

- (c) *The name, title, post office address, and telephone number of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed;*

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⁴ Letter from Jean L. Kiddoo and Troy F. Tanner to Marlene H. Dortch, dated June 29, 2004.

(d) A statement as to whether the applicant has previously received authority under Section 214 of the Act and, if so, a general description of the categories of facilities and services authorized (i.e., authorized to provide international switched services on a facilities basis);

Telecom Argentina USA, Inc. is authorized under Section 214 of the Act to provide Global or Limited Global Facilities-Based Service and Global or Limited Global Resale Service, File No. ITC-214-20010129-00034.

(h) The name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent). The applicant shall also identify any interlocking directorates with a foreign carrier.

**Telecom Italia S.p.A.
Piazza degli Affari 2
20123 Milano
Italy**

Telecom Italia S.p.A. is an Italian corporation that provides telecommunications services.

At the time of the Transaction , the Telecom Italia Group indirectly owned 50% of the equity of Telecom Argentina USA.

**W de Argentina - Inversiones S.L. (referred to as the W de Argentina)
Juan de Garay 2855
–Santa Fe, Argentina**

W de Argentina - Inversiones S.L. is a Spanish limited liability holding company.

As a result of the Transaction, W de Argentina indirectly owned 50% of the equity of Telecom Argentina USA.

At the time of the Transaction, Telecom Italia and W de Argentina each owned respectively 50% of the capital of Sofora Telecomunicaciones S.A. (“Sofora” – an Argentine corporation), which owns 69,94% of the capital of Nortel Inversora S.A. (“Nortel Inversora” -- an Argentine corporation), which owns 54.74% of the capital Telecom Argentina S.A.(an Argentina corporation), which in turn holds 100% of the shares of Telecom Argentina USA, Inc.

The address for these companies in the ownership chain of Telecom Argentina USA is:

**Sofora Telecomunicaciones S.A.
Av. Madero 900, 26th Floor
C1107AAB Buenos Aires, Argentina**

**Nortel Inversora S.A.
Alicia Moreau de Justo 50, 11th Floor
C1107AAB Buenos Aires, Argentina**

**Telecom Argentina S.A.
Alicia Moreau de Justo 50
C1107AAB Buenos Aires, Argentina**

- (i) *A certification as to whether or not the applicant is, or is affiliated with, a foreign carrier. The certification shall state with specificity each foreign country in which the applicant is, or is affiliated with, a foreign carrier.*

Telecom Argentina USA certifies that it is not a foreign carrier. However, Telecom Argentina USA certifies that it is affiliated with Telecom Argentina, a foreign carrier in Argentina, with a subsidiary providing wireless services in Paraguay. In addition, as a result of the greater than 25% ownership of Telecom Argentina by the Telecom Italia Group, Telecom Argentina USA is affiliated with foreign carriers in Italy and the other countries in which Telecom Italia has affiliates. W de Argentina has no other foreign carrier affiliations. Attachment A identifies all of the countries in which Telecom Argentina USA is deemed to have affiliations with foreign carriers under the Commission's Rules.⁵

- (j) *A certification as to whether or not the applicant seeks to provide international telecommunications services to any destination country for which any of the following is true. The certification shall state with specificity the foreign carriers and destination countries:*

⁵ Attachment A lists the current affiliates of Telecom Argentina USA. We have not attempted to recreate a list of affiliates as of the time of the Transaction, which may differ slightly from this list, but which should not affect the Commission's review of the Transaction.

- (1) The applicant is a foreign carrier in that country; or*
- (2) The applicant controls a foreign carrier in that country; or*
- (3) Any entity that owns more than 25 percent of the applicant, or that controls the applicant, controls a foreign carrier in that country.*
- (4) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of the applicant and are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.*

Telecom Argentina USA certifies that it seeks to provide international telecommunications service to Argentina, a country where it is affiliated with a foreign carrier in that country by reason of that carrier's 100% ownership of Telecom Argentina USA. In addition, Telecom Argentina USA certifies that it seeks to provide service to the countries set forth in Attachment A, where it is affiliated with those foreign carriers by reason of the ownership interest in Telecom Argentina by Telecom Italia Group, with the exception of San Marino.

(k) For any destination country listed by the applicant in response to paragraph (j), the applicant shall make one of the following showings:

- (1) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or*
- (2) The applicant's affiliated foreign carrier lacks market power in the named foreign country; or*
- (3) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's market for the service that the applicant seeks to provide (facilities-based, resold switched, or resold non-interconnected private line services). An effective competitive opportunities demonstration should address the following factors:*
 - (i) If the applicant seeks to provide facilities-based international services, the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);*
 - (ii) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);*

(iii) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service;

(iv) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(A) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(B) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(C) Protection of carrier and customer proprietary information;

(v) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(vi) Any other factors the applicant deems relevant to its demonstration.

The destination markets identified in Attachment A and Section (i) above are all WTO-member countries, or the foreign carrier is non-dominant, with the exception of San Marino.

(l) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to a country where it is a foreign carrier or is affiliated with a foreign carrier shall either provide a showing that would satisfy § 63.10(a)(3) or state that it will file the quarterly traffic reports required by § 43.61(c) of this chapter.

Telecom Argentina USA certifies that with respect to those countries where it is affiliated with a dominant foreign carrier and it intends to continue to provide service via the resale of services of an unaffiliated U.S. carrier, it will file the quarterly traffic reports required by Section 43.61(c) of the Commission's Rules.

(m) With respect to regulatory classification under § 63.10 , any applicant that is or is affiliated with a foreign carrier in a country listed in response to paragraph (i) and that desires to be regulated as non-dominant for the provision of particular international telecommunications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10 .

Telecom Argentina USA agrees to continue to be regulated as a dominant carrier on the U.S.-Argentina route, without prejudice to its right to seek reclassification at a later date. Telecom Argentina USA is entitled to non-dominant treatment with regard to the services it seeks to provide to all other countries. With respect to the routes between the United States and Italy and the other countries identified in Attachment A where it is affiliated with a dominant foreign carrier as a result of its affiliation with the Telecom Italia Group, Telecom Argentina USA submits that it is entitled to non-dominant treatment under Section 63.10(a)(4), because it will provide service solely via the resale of international switched services of an unaffiliated U.S. carrier. With respect to all other countries, Telecom Argentina USA has no affiliation with a foreign carrier with market power.

(n) A certification that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

Telecom Argentina USA certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

(o) A certification pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. 853a.

Telecom Argentina USA certifies, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules (implementing the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a), that no party to this application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

(p) If the applicant desires streamlined processing pursuant to § 63.12, a statement of how the application qualifies for streamlined processing.

Telecom Argentina USA is entitled to streamlined processing of this application pursuant to Sections 63.12(c)(2) and 63.12(c)(1)(iv) of the Commission's Rules. Telecom Argentina USA agrees to continue to be regulated as a dominant carrier on the U.S.-Argentina route, without prejudice to its right to petition to be reclassified at a later date. In addition, with respect to the routes between the United States and Italy and the other countries identified in Attachment A where Telecom Argentina USA is affiliated with a dominant foreign carrier as a result of its affiliation with the Telecom Italia Group, Telecom Argentina USA will provide service solely through the resale to the

switched services of an unaffiliated U.S. carrier, and those countries are WTO member countries. The only exception is San Marino, and Telecom Argentina USA is not requesting authority herein to serve that market.

Because Telecom Argentina USA also provides (limited) domestic services, pursuant to Section 63.04(b) of the Commission's Rules Telecom Argentina USA provides the information required in paragraphs (6) through (12) of § 63.04(a):

(6) A description of the transaction;

As described in greater detail above, at the time of the Transaction Telecom Italia Goup's indirect ownership in Telecom Argentina USA remained at 50%, while W de Argentina's ownership increased to 50% by acquiring the 2% held by France Telecom.

(7) A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area;

Telecom Argentina USA offers pre-paid calling card services, which can be used throughout the United States.

(8) A statement as to how the application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment;

The Transaction is entitled to presumptive streamlined treatment under Section 63.03(b)(2) of the Commission's Rules, because Telecom Argentina USA's market share of the interstate, interexchange market is significantly less than 10 percent, and it is not dominant with respect to any services offered in the United States.

(9) Identification of all other Commission applications related to the same transaction;

Telecom Argentina USA is simultaneously seeking authorization for this change of control with respect to its International 214 authority (original File No. ITC-214-20010129-00034).

(10) A statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure;

Applicant is not requesting special consideration because it is not facing imminent business failure.

(11) Identification of any separately filed waiver requests being sought in conjunction with the transaction; and

Applicant is not requesting any waivers, although it is requesting retroactive approval in light of the fact that the Transaction already closed and has subsequently been undone, as explained above.

(12) A statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets.

The Transaction clarified management of Telecom Argentina USA's parent, which allowed Telecom Argentina USA to become a more efficient and hence stronger competitor, which in turn will benefit consumers in the United States.

CONCLUSION

For the reasons set forth above, Telecom Argentina USA respectfully submits that the public interest, convenience and necessity would be furthered by a prompt grant of this Section 214 transfer of control application.

Respectfully submitted,

/s/

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